

IN THE INTERMEDIATE COURT OF MAURITIUS

(Financial Crimes Division)

Cause Number: 14/2023

The Independent Commission Against Corruption

v

Marie Annais Cinthya Francoise

SENTENCE

1. The Accused stands charged with the offence of Money Laundering in breach of Sections 3(1)(b), 6 and 8(1)(2) of the Financial Intelligence and Anti-Money Laundering Act ("the Act") under Counts 1 and 6 of the Information. Under Counts 2 to 5 and 7 of the Information, the Accused stands charged with the offence of Money Laundering in breach of Sections 3(1)(a), 6 and 8(1)(2) of the Act. The Accused pleaded guilty on all the 7 counts of the Information.

2. Both the Prosecution and the Accused were represented by Counsel.

3. The Accused admitted the truth of the Information and showed no cause why she should not be convicted. The fact that the Accused entered an unequivocal and unambiguous guilty plea before me on all 7 counts, I am duty bound to proceed according to Section 72(2) of the District and Intermediate Courts (Criminal Jurisdiction) Act which provides:

Where the accused admits the truth of the information and shows no sufficient cause why he should not be convicted, then the Magistrate shall convict him, and after hearing such evidence as may be necessary to show the facts and circumstances of the case, shall pass such sentence as the nature of the offence may require.

4. Witness No.: 2 produced the three defence statements she recorded from the Accused (Docs A, A₁, and A₂). She averred that she did not enquire further into this matter.

In cross-examination, she stated that the Accused cooperated fully during the enquiry and the latter expressed her regrets when she was giving her statements.

5. Witness No.: 1 produced three defence statements she recorded from the Accused ((Docs B, B₁, and B₂). She averred that during the investigation she obtained the bank statement of Accused for the period of March 2020 to 12th October 2020 from ABSA Bank. She averred that the bank account showed that a loan for an amount of Rs 500, 000 was disbursed on 17.08.2020 to the Accused. The witness produced the bank account of the Accused (Doc C). In cross-examination, the witness agreed that the Accused cooperated fully during the enquiry and she expressed her regrets at the outset. She agreed that the Accused has shown her willingness to come as a witness for the ICAC if ever there is a prosecution against one Mr Fotso. She agreed that the amount that was disbursed in her bank account was handed over by the Accused to Mr Fotso.

6. The Accused made a statement from the Dock. The Accused begged for an excuse and stated that she would not re-offend. She averred that she works part-time as a maid and has a child of 11 years under her care. She averred that she did not use the money but gave it to Mr Fotso.

7. During the pre-sentence hearing, the Accused made a statement from the Dock once again begging for an excuse. She averred that she is a single mother and looks after her child.

8. I have duly considered all the evidence adduced, the authorities submitted and the submissions of both learned Counsel.

9. The submission of learned Counsel for the Accused can be summarised in the following terms namely, he is praying for the leniency of the Court because of the timely guilty plea of the Accused, she cooperated fully during the investigation, she is willing to cooperate with the investigating authority if there is prosecution against another Accused party and the remorsefulness of the Accused is to be taken into account before imposing a sentence. Learned Counsel for the Accused prayed for a non-custodial sentence to be imposed on the Accused

10. Learned Counsel for the Accused also supported his submission by citing the case of *Heera v the State* [2012] SCJ 17.

11. On the other hand, learned Counsel for the Prosecution submitted that the Accused pleaded guilty on the first occasion and the Accused is willing to cooperate with the Authority. He also submitted that Section 8(3) of the Act provides that a Community Service Order cannot be imposed on the Accused.

12. Following the unequivocal and unambiguous guilty plea of the Accused, on 30.08.2023 I found her guilty as charged in relation to the 7 counts contained in the Information that have been preferred against her.

13. Section 3 (1) (a) and (b) of the Act read as follows:

Any person who -

(a) engages in a transaction that involves property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime; or

(b) receives, is in possession of, conceals, disguises, transfers, converts, disposes of, removes from or brings into Mauritius any property which is, or in whole or in part directly or indirectly represents, the proceeds of any crime,

where he suspects or has reasonable grounds for suspecting that the property is derived or realized, in whole or in part, directly or indirectly from any crime, shall commit an offence.

14. Section 8 of the Act stipulates:

(1) Any person who -

(a) commits an offence under this Part; or

(b) disposes or otherwise deals with property subject to a forfeiture order under subsection (2),

shall, on conviction, be liable to a fine not exceeding 10 million rupees and to penal servitude for a term not exceeding 20 years

(2) Any property belonging to or in the possession or under the control of any person who is convicted of an offence under this Part shall be deemed, unless the contrary is proved, to be derived from a crime and the

Court may, in addition to any penalty imposed, order that the property be forfeited.

- (3) *Sections 150, 151 and Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a conviction under this Part.*

15. I bear in mind the following mitigation factors namely that the Accused is of a clean record, the timely guilty plea of the Accused is a robust mitigating factor, the remorse shown by her, she is in gainful employment, she cooperated during the investigation and she showed her willingness to cooperate with The Independent Commission Against Corruption in the event there is prosecution against another Accused party.

16. In ***The State v Cheetamun*** [2017] SCJ 443, the Court held that: -

"... a guilty plea which saves the time of the court and expenses on the State is a strong mitigating factor which may entitle an accused party to a discount of sentence."

17. In ***Goolfee v The State*** [1996] SCJ 144, the Court held that: -

"... we are of the view that a plea of guilty should operate as a strong mitigating factor. It would be pointless for accused parties to plead guilty, thereby showing remorse, saving the time of the court and sparing witnesses the ordeal of testifying, if in spite of such a plea, they are to be visited with the maximum penalty that a court can inflict for the offence. Of course there may be cases where the crime is so heinous that a plea of guilty should not operate as a veil."

18. In ***Mosaheb v The State*** [2010] SCJ 150, it was held that:

"Sentence in each case has to be determined in accordance with the facts and circumstances surrounding the commission of the particular offence and the other relevant circumstances of an accused party."

19. In deciding the appropriate sentence to be inflicted on an Accused, the Court must take into consideration the principles set out in ***Aubeeluck v The State*** [2010] UKPC 13, namely that a sentence must be proportionate and the concept of individual sentencing.

20. Also, in ***Hossen v The State*** [2013] SCJ 367, the Court of Appeal held:

"... each case depends on its own facts and the sentence must be proportionate to the facts of the case."

21. In addition, in **Heerah v The State [2012] SCJ 71**, at paragraph 15 the Court held that:

"That a prison sentence is normally appropriate where an offender is convicted for serious offences, of that there is no doubt. But the level at which the offence should be placed on the scale of offences in terms of the degree of seriousness must not be ignored. Furthermore, not all candidates who fail the test of monetary penalties, or a Probation or Conditional Discharge Order become automatically candidates for prisons. A custodial sentence used to be once the only option for offenders who failed such tests after the Court had ruled out a fine, a Probation or Conditional Discharge Order."

22. I also find it apt to quote paragraph 16 from **Heerah**, where it was stated that: -

"Courts should refrain from imposing custodial sentences as a matter of reflex and indiscriminately in all cases where fines and Probation Orders and Conditional Discharge Orders are not found appropriate. Serious consideration should be given to that intermediate option inasmuch as "the deprivation of liberty through a custodial sentence is the most severe penalty available to the courts and the proper punishment for the most serious crimes:"

23. In **Sabapathee v The Director of Public Prosecutions [2014] UKPC 19** at paragraph 17 it was held that:


". . . sentencing is not a science of mathematical application of any set formula. It is a normative science rather than a physical science which takes into account the circumstances of the offender as well as the offence and the impact of the offence on the community.

24. Taking into account the nature of the evidence adduced, the facts and circumstances of the case and the principles enunciated in the above-mentioned cases I am of the view that a fine will meet the ends of justice.

25. I, therefore, sentence the Accused to pay a fine of: -

- i. Rs 75,000 under Count 1;
- ii. Rs 2,000 under Count 2;
- iii. Rs 2,000 under Count 3;
- iv. Rs 2,000 under Count 4;
- v. Rs 2, 000 under Count 5;
- vi. Rs 75,000 under Count 6; and
- vii. Rs 2,000 under Count 7.

26. The Accused to pay Rs 500 as costs.



Neeshal K JUGNAUTH

Acting Magistrate

Intermediate Court

(Financial Crimes Division)

23.10.2023